

granted.¹ For the reasons set forth below, the Motions to Dismiss are GRANTED.

Background

When ruling on a motion to dismiss, the Court must accept the complaint's well-pled allegations as true. See, e.g., Gregory v. Daly, 243 F.3d 687, 691 (2d Cir. 2001). For the purpose of deciding the pending motions, the Court sets forth the following.

The Marine Transportation Security Act of 2002 (hereinafter "MTSA"), 46 U.S.C. § 70101 et seq., establishes a framework for vessel and port security designed to prevent and deter the occurrence of a "transportation security incident" "resulting in significant loss of life, environmental damage, transportation system disruption or economic disruption in a particular area." 46 U.S.C. § 70101(6). To carry out these goals, the MTSA requires owners and operators of vessels which the Department of Homeland Security (hereinafter "DHS") determines may be involved

¹ The pending motions to dismiss were filed in response to the original complaint of October 4, 2004. On December 29, 2004, the plaintiffs filed an amended complaint naming "Robert J. Cabin" as an additional plaintiff. In addition, on January 24, 2005, the plaintiffs filed a second motion to amend which added three paragraphs referencing affidavits which the Court has not found material in rendering this ruling. In sum, the substance of plaintiffs' Fourth Amendment claims remains unchanged; therefore, the Court will consider the pending motions as if they had been addressed to the second amended complaint.

in a security problem to prepare a plan to "deter[] a transportation security incident to the maximum extent possible."

46 U.S.C. § 70103(c).

The LCT operates passenger ferries on Lake Champlain, crossing between several locations in New York and Vermont. Paper 23 at para. 8. DHS and the Coast Guard have identified LCT's ferries as one type of vessel at risk of being involved in a transportation security incident. The LCT ferries determined to be at risk include vessels greater than 100 gross register tons or certified to carry more than 150 passengers. See 33 C.F.R. §§ 104.105(5) and (6) (defining the MTSA as applicable to certain "passenger vehicles"). Accordingly, pursuant to the MTSA and attendant regulations, see 33 C.F.R. §§ 101.100 et seq., and in cooperation with the Coast Guard, LCT has implemented a plan which includes "random screening of persons, cargo, vehicles, or carry-on baggage prior to allowing access onto LCT facilities and/or vessels." Paper 23 at Ex. A. Individuals who do not permit a requested search are not permitted to board LCT ferries; the Coast Guard and DHS require LCT to file a formal report of any individual's refusal to consent to a requested pre-boarding search. See Paper 23 at para. 52; see also 33 C.F.R. §104.265 (outlining "security measures for access control").

The plaintiffs use LCT ferries to commute to work. On several occasions, they reluctantly have consented to the search

of their baggage or vehicles by LCT dock attendants before boarding of the vessels. See, e.g. Paper 23 at paras. 54 (inspection of Mr. Cassidy's automobile trunk) and 94 (search of Mr. Cabin's bike pack). The screenings admittedly have been conducted quickly and are minimally intrusive: car passengers are asked to "pop" the trunk and foot passengers present carry-on bags for a brief inspection of contents. It is undisputed that the random security inspections are designed to prevent and deter passengers from bringing potentially dangerous items on board ship. See generally 33 C.F.R. § 101.105 (defining screening as "intended to ensure that dangerous substances and devices. . . are not present."). Nevertheless, the plaintiffs seek a declaration "that the random searches conducted on LCT ferries, absent a 'special needs' justification outweighing the privacy interests of LCT ferry passengers, are unconstitutional, in violation of the Fourth Amendment." Paper 23 at 18, para. (b).

Discussion

As posed by the plaintiffs, "[t]he question raised by this case is simply stated and important: Can passengers on the Lake Champlain ferries be made to submit, as a condition of boarding, to suspicionless inspections of their trunks and carry-on bags, as part of the Government's ongoing 'War on Terror'?" Pls' Mem. in Opp'n to Mot. to Dismiss (Paper 20) at 1. The brief answer

is: Because the searches about which the plaintiffs complain advance a "special governmental need" to provide domestic security, they are not proscribed by the Fourth Amendment.

The Fourth Amendment protects individuals from "unreasonable searches and seizures." "In the criminal context, reasonableness usually requires a showing of probable cause." Bd. of Educ. of Indep. Sch. Dist. No. 92 v. Earls, 536 U.S. 822, 828 (2002).

"The probable-cause standard, however, is peculiarly related to criminal investigations, and may be unsuited to determining the reasonableness of administrative searches where the Government seeks to prevent the development of hazardous conditions." Id. (emphasis omitted). For that reason, "[a] search unsupported by probable cause can be constitutional . . . when special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable." Veronia Sch. Dist. v. Acton, 515 U.S. 646, 653 (1995) (quotations omitted).

Federal courts have found such "special needs" other than crime detection exist in a variety of situations involving important governmental interests in protecting the public's health and safety. See, e.g., Nat'l Treasury Employees Union v. Von Raab, 489 U.S. 656, 666 (1989) (Customs Service's drug testing program presented a "special need" in that it was designed "to deter drug use among those eligible for promotion to sensitive

positions within the Service and to prevent promotion of drug users"); N.G. v. Connecticut, 382 F.3d 225, 231 (2d Cir. 2004) (noting "special needs" standards have applied to permit reasonable, warrantless searches in hospitals, schools, government agencies and highly regulated industries). "When such 'special needs' - concerns other than crime detection - are alleged in justification of a Fourth Amendment intrusion, courts must undertake a context-specific inquiry, examining closely the competing private and public interests advanced by the parties." Chandler v. Miller, 520 U.S. 305, 314 (1997).

"[W]here the privacy interests implicated by the search are minimal, and where an important governmental interest furthered by the intrusion would be placed in jeopardy by a requirement of individualized suspicion, a search may be reasonable despite the absence of such suspicion." Id. (citation omitted); accord Bd. v. Earls, 536 U.S. at 829 ("[W]e have long held that the Fourth Amendment imposes no irreducible requirement of [individualized] [sic] suspicion.") (citation and quotation omitted).

The random searches about which plaintiffs complain clearly constitute a special needs search permitted under the Fourth Amendment. Congress has determined that ferries like those which operate on Lake Champlain may be vulnerable to terrorist incidents and, therefore, should be subject to new, more comprehensive security measures designed to protect public safety

and secure commercial interests. See 46 U.S.C. § 70102(b)(1). Pursuant to Congressional directive, the DHS and Coast Guard conducted a complex, risk-based analysis to determine which vessels are at high risk of being subject to a security incident. This analysis considered an array of factors, including the susceptibility of commercial maritime vessels for use as terrorist targets, as means for transferring terrorists and terrorist-related materials, or as weapons themselves. Based on these assessments, the defendants implemented the policies and procedures at issue. See generally Temporary Interim Rule: General Implementation, 68 Fed. Reg. at 39243-50. These assessments and decisions are entitled to deference and not subject to second-guessing by a reviewing court. See, e.g., Kruse v. Wells Fargo Home Mortgage, Inc., 383 F.3d 49, 58 (2d Cir. 2004) (deference is required where Congress delegated authority to agency to make rules carrying the force of law).

Random, warrantless searches further these goals by deterring potential security breaches. The deterrence effect is enhanced because measures similar to those undertaken by LCT are currently being implemented nationwide. See Paper 17 at 28-29. Moreover, random searches are reasonable in that they are conducted in a manner no more intrusive than is necessary to achieve the compelling governmental interest of protecting the

safety of passengers and deterring terrorist attacks on maritime vessels.

The plaintiffs' complaint describes random, quick visual searches of the automobile trunk and passenger compartments and of carry-on baggage. Given the voluntary nature of plaintiffs' decision to travel by ferry, such searches constitute a minimal invasion of any arguable expectation of privacy. Cf. California v. Carney, 471 U.S. 386, 393 (1985) ("[T]here is a reduced expectation of privacy stemming from [a mobile home's] use as a licensed motor vehicle subject to a range of police regulation inapplicable to a fixed dwelling."); United States v. Edwards, 498 F.2d 496, 500 (2d Cir. 1974) ("The [airport] search of carry-on baggage, applied to everyone, involves not the slightest stigma To brand such a search unreasonable would go beyond any fair interpretation of the Fourth Amendment."). In short, absent evidence of abusive practices, the measures implemented by the defendants are akin to the type of security measures which are employed in the air travel industry and pass constitutional muster.

The Motions to Dismiss are GRANTED.

SO ORDERED.

Dated at Brattleboro, Vermont, this 16th day of February, 2005.

/s/ J. Garvan Murtha
J. Garvan Murtha
United States District Judge